SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

GILMORE G. SCRANTON,
Plaintiff in Error,
vs.
EBEN S. WHEELER.

No. 49.

In Error to the Supreme Court of the State of Michigan.

Brief for Plaintiff in Error upon Argument.

HARLOW P. DAVOCK,
Counsel for Plaintiff in Error.

I.

The attention of the Court is called to the fact that this is an action of ejectment, and under the law of the State of Michigan, after a final judgment shall be rendered, at any time within three years, the parties against whom same was rendered may, upon proper application, apply for a new trial.

Therefore, it is suggested that this Court, upon making its decision, should remand the case to the Circuit Court for the County of Chippewa, State of Michigan, where the proceedings in this cause originated.

II.

Upon the argument of this cause, Mr. Justice White referred to the fact that the United States refused to permit anyone to pass over or to have access to the jetties at the mouth of the Mississippi River.

Having formerly been a civil engineer in the employ of the United States Engineer Corps, and having inspected the Eads jetties, so called, during the progress of their construction, I desire to make a brief statement of their physical surroundings.

The uplands of the Mississippi River practically terminate at Forts St. Phillips and Jackson, and below this, extending down to twenty miles at the head of the passes, and thence a distance of twelve or fifteen miles to the Gulf itself, is the delta of the Mississippi River, so called. At the head of the passes the river spreads itself like a root of a tree, or the extended fingers of a hand, forming the Southwest pass, the South pass, the East pass, pass a la Loutre, etc. These passes, bordered with a narrow fringe of marshy land, are from twelve to fifteen miles in length, and terminate in the Gulf of Mexico. The Eads jetties at the mouth of the South pass were expressly designed and built to confine the discharge of the water so that it would scour out the bar found at the outlet of the river.

See report of Chief of Engineers, U. S. A., 1897. Charts of South Pass, Part II., 749. Also Ex. "X," filed herein.

As can be readily seen, being miles away from any upland, there could not be any riparian rights present, no private interests could be injured in connection with the peculiar construction required, and there being an absolute necessity of the jetties being kept intact, the most stringent regulations were necessary for their care.

The Supreme Court of the State of Michigan, when the State in 1895 by enactment set aside certain submerged lands in Lake Erie for public shooting grounds, making it lawful to destroy the rushes and other submarine vegetation on such lands, said it was not unconstitutional, in that it deprived the riparian owner of property rights without due notice and compensation. That the fee of the soil lying beneath the waters of the great lakes were in the State and the right of the riparian owner limited to the enjoyment of such easements as were at common law incident to the ownership of land bordering upon navigable streams.

People vs. Silberwood, 110 Mich., 103.

But in this case, before this Court, the upland was situated upon the banks of the St. Marys River, the improvement made, although desirable, not only was not absolutely necessary, but was one which, when made, was entirely different and governed by rules not applicable to those existing at the mouth of the Mississippi River or upon the great lakes, of which Lake Erie is one.

Even the building of the pier itself was not absolutely necessary. The channel, when dredged, could have been staked out and vessels thus could as easily as now have avoided making the swing around the curve of the old South pier. If the pier was built so as to allow vessels to tie up and await their passage through the canal lock a mile below, it was valuable as a docking privilege alone, and the property of the plaintiff should not be taken for public use without just compensation, and there was no absolute necessity for either the building of the pier or of destroying the plaintiff's right of access thereby.

HARLOW P. DAVOCK,
Counsel for Plaintiff in Error.